

**UNITED STATES OF AMERICA  
BEFORE THE NATIONAL LABOR RELATIONS BOARD  
DIVISION OF JUDGES  
NEW YORK BRANCH OFFICE**

**98 CRYSTAL PALACE RESTAURANT INC.,  
d/b/a GRAND HARMONY RESTAURANT**

**and**

**Case 02-CA-160359**

**318 RESTAURANT WORKERS UNION**

*Greg Davis Esq.*, Counsel for the  
General Counsel  
*Nelson Mar*, President of 318  
Restaurant Workers Union

**DECISION**

**STATEMENT OF THE CASE**

Raymond P. Green, Administrative Law Judge. I heard this case on April 18, 2016.<sup>1</sup> The charge and amended charge were filed on September 21 and 22, 2015.<sup>2</sup> The Complaint was issued on December 30, 2015, and alleged as follows:

1. That on April 14, 2014, the Board certified the Union as the representative of certain employees.
2. That on or about August 25, 2015, the Respondent closed its facility and terminated all of the bargaining unit employees.
3. That since October 9, 2015, the Respondent refused to respond to the Union's request to bargain over the effects of the closing.

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<sup>1</sup> Notwithstanding being served with the Complaint and the Notice of Hearing, the Respondent did not appear at the hearing.

<sup>2</sup> The original charge contained an incorrect address, (94 Mott Street), and was not served on the Respondent. Nevertheless on the following day, an amended charge was filed and this was served on the Respondent at its correct address, which was 98 Mott Street, New York, New York 10013. The envelope containing the amended charge was, however, returned to the Region stamped; "attempted—not known, unable to forward." Thereafter, the Union, by tracking the license plate of the owner's car, provided the Region with the residential address of the married owners of Respondent, Juan Na Chen and Wei Ping Chen. The amended charge was thereupon served at their residence located at 17 Lake Road, Great Neck, New York 11020. It is also noted that the Complaint was served on the Respondent's owners at their residence and at the restaurant's address at 98 Mott Street, and that its attorney filed an Answer on January 12, 2016.

On the entire record, including my observation of the demeanor of the witnesses, and after considering the briefs filed, I make the following

## **FINDINGS AND CONCLUSIONS**

### **I. JURISDICTION**

The Answer filed by counsel for the Respondent dated January 12, 2016 admits that the Respondent is a New York corporation that operated a public restaurant until August 25, 2015 at 98 Mott Street, New York, New York, 10013. The Answer also admitted paragraph 2(b) of the Complaint which alleged that in conducting its operations during the 12-month period ending August 25, 2015, the employer derived gross revenues in excess of \$500,000 and purchased goods valued in excess of \$5,000 that were produced and originated from outside the State of New York. Accordingly, based on the Board's standards for retail enterprises, I conclude that the Respondent is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act. I also find based on the testimony of Nelson Mar, the Union's president that 318 Restaurant Workers Union is an organization in which employees participate and that exists for the purpose of representing employees concerning grievances, labor disputes, wages, rates of pay, hours of employment, or conditions of work. I therefore conclude that it is a labor organization within the meaning of Section 2(5) of the Act.

### **II. THE ALLEGED UNFAIR LABOR PRACTICES**

Pursuant to a stipulated election agreement, the Union was certified as the exclusive collective-bargaining representative on April 14, 2015. The unit consisted of all full-time and regular part-time dining room employees, including waiters, bus persons, and dim sum sellers employed by Respondent at its facility located at 94 Mott Street, New York, New York, known as the Grand Harmony Restaurant. Despite a period of bargaining, the parties failed to reach a collective-bargaining agreement.

On or about August 25, 2015, the employees were unexpectedly notified that the restaurant was closed and that they should collect their wages. On August 31, 2015, the following notice was posted on the restaurant's window:

We'd like to express our appreciation to our customers for their support. Due to our lease coming to an end, the less than favorable economic conditions of the past few years, and several failed attempts at trying to continue the lease with our landlord, Good Harmony Restaurant will be closing its doors. We'd like to express our deepest apologies for any inconvenience and hope you understand.

The evidence shows that prior to the closing of the restaurant, the Union was not notified about the closing and was not given an opportunity to bargain about the effects of the closing.

On October 9, 2015, the Union sent letters to the restaurant at 98 Mott Street and to Wei Ping Chen at his residential address in Great Neck, New York. In these letters, the Union requested bargaining over the effects of the closure of the restaurant. The certified receipt shows that this letter was received at the Chen's home address in Great Neck.

The evidence also shows that upon receipt of the letter, an attorney representing the Respondent, (Michael Mule), left a voice mail message with the Union asking for legal authority

supporting the position that it had an obligation to bargain over the closing. This was followed up by an e-mail dated October 16, 2015, whereby Mule reiterated his request for legal authority.

On October 22, the Union's representative replied by e-mail and cited language from the Supreme Court's decision in *First National Maintenance Corp. v. NLRB*, 452 U.S. 666, 682–683 (1981) ("bargaining over the effects of a decision must be conducted in a meaningful manner and at a meaningful time, and the Board may impose sanctions to insure its adequacy.")

The October 22 communication was the final one between the parties and at no time did the Respondent offer to bargain over the effects of its decision to close.

### ANALYSIS

I conclude that the amended charge was properly served on the Respondent when after its initial failure of delivery, it was served at the owner's home address in Great Neck, New York. Also, there is no question but that the Complaint was properly served and it is clear that sufficient notice was given as an attorney representing the Respondent filed a timely Answer to the Complaint.

Where there is a duly certified or recognized collective-bargaining representative, an employer, although not having an obligation to bargain about a decision to close its business, it nevertheless does have an obligation to bargain about the effects of that decision. *First National Maintenance*, 452 U.S. 666, 678 fn. 15 (1981).

In the present case, the evidence shows that the Respondent did not give the Union prior notice of its decision to close. And when the Union made a demand to bargain, it refused. Accordingly, it is clear that the Union was not given an opportunity to bargain about the effects of this decision and to this extent, I conclude that the Respondent violated Section 8(a)(5) and (1) of the Act.

### REMEDY

Having found that the Respondent has engaged in certain unfair labor practices, I find that it must be ordered to cease and desist and to take certain affirmative action designed to effectuate the policies of the Act.

In accordance with the Board's decision in *Transmarine Navigation Corp.*, 170 NLRB 389 (1968), I shall recommend a limited backpay remedy designed to make whole the employees for those losses suffered as a result of the Respondent's failure to bargain in good faith.

On these findings of fact and conclusions of law and on the entire record, I issue the following recommended <sup>3</sup>

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<sup>3</sup> If no exceptions are filed as provided by Sec. 102.46 of the Board's Rules and Regulations, the findings, conclusions, and recommended Order shall, as provided in Sec. 102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes.

**ORDER**

The Respondent, 98 Crystal Palace Restaurant Inc., d/b/a Grand Harmony Restaurant, its officers, agents, and representatives, shall

1. Cease and desist from

(a) Refusing to bargain with 318 Restaurant Workers Union about the effects of its decision to close the restaurant.

(b) In any like or related manner, interfering with, restraining or coercing employees in the rights guaranteed to them by Section 7 of the Act.

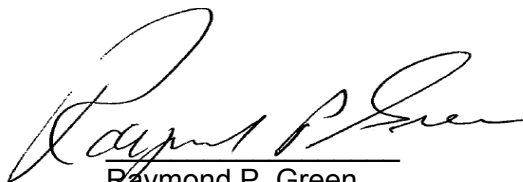
2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Upon request, bargain with the Union about the effects on its employees employed at 98 Mott Street, New York, New York, and to pay these employees amounts at the rate of their normal wages when last in the Respondent's employ from 5 days after the date of this Decision until the occurrence of the earliest of the following conditions:

(1) the date the Respondent bargains for agreement with the Union on those subjects pertaining to the effects of the closing; (2) a bona fide impasse in bargaining; (3) the failure of the Union to request bargaining within 5 days of this Decision, or to commence negotiations within 5 days of the Respondent's notice of its desire to bargain with the Union; or (4) the subsequent failure of the Union to bargain in good faith; but in no event shall the sum paid to any of these employees exceed the amount he would have earned as wages from August 25, 2015, the date on which the Respondent terminated its operations, to the time they secured equivalent employment elsewhere, or the date when the Respondent offers to bargain, whichever occurred sooner; provided, however, that in no event shall this sum be less than these employees would have earned for a 2-week period at the rate of their normal wages when last in the Respondent's employ.

(b) As the employer has closed the facilities involved in these proceedings, the Employer shall duplicate and mail, at its own expense, a copy of the notice attached hereto as Exhibit A to all current employees and former employees employed by the Employer at any time since August 25, 2015.

Dated, Washington, D.C. May 13, 2016



Raymond P. Green  
Administrative Law Judge

## Appendix

## NOTICE TO EMPLOYEES

**Posted by Order of the  
National Labor Relations Board  
An Agency of the United States Government**

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

Section 7 of the Act gives employees these rights.

To organize

To form, join, or assist any union

To bargain collectively through representatives of their own choice

To act together for other mutual aid or protection

To choose not to engage in any of these protected concerted activities.

**WE WILL NOT** refuse to bargain with 318 Restaurant Workers Union about the effects of our decision to close the restaurant.

**WE WILL NOT** in any like or related manner interfere with, restrain or coerce our employees in the rights guaranteed by Section 7 of the Act.

**WE WILL**, upon request, bargain collectively with 318 Restaurant Workers Union with respect to the effects of our decision to close our restaurant at 98 Mott Street, New York, New York, on the employees who were employed there, and reduce to writing any agreement reached as a result of such bargaining.

**WE WILL** pay the employees who were employed at the restaurant their normal wages for a period required by the Decision and Order of the National Labor Relations Board.

**98 Crystal Palace Restaurant Inc. d/b/a Grand  
Harmony Restaurant, Inc.**

**(Employer)**

Dated \_\_\_\_\_ By \_\_\_\_\_  
(Representative) (Title)

The National Labor Relations Board is an independent Federal agency created in 1935 to enforce the National Labor Relations Act. It conducts secret-ballot elections to determine whether employees want union representation and it investigates and remedies unfair labor practices by employers and unions. To find out more about your rights under the Act and how to file a charge or election petition, you may speak confidentially to any agent with the Board's Regional Office set forth below. You may also obtain information from the Board's website: [www.nlr.gov](http://www.nlr.gov).

26 Federal Plaza, Room 3614, New York, NY 10278-0104  
(212) 264-0300, Hours: 8:45 a.m. to 5:15 p.m.

The Administrative Law Judge's decision can be found at [www.nlr.gov/case/02-CA-160359](http://www.nlr.gov/case/02-CA-160359) or by using the QR code below. Alternatively, you can obtain a copy of the decision from the Executive Secretary, National Labor Relations Board, 1015 Half Street, S.E., Washington, D.C. 20570, or by calling (202) 273-1940.



**THIS IS AN OFFICIAL NOTICE AND MUST NOT BE DEFACED BY ANYONE**

THIS NOTICE MUST REMAIN POSTED FOR 60 CONSECUTIVE DAYS FROM THE DATE OF POSTING AND MUST NOT BE ALTERED, DEFACED, OR COVERED BY ANY OTHER MATERIAL. ANY QUESTIONS CONCERNING THIS NOTICE OR COMPLIANCE WITH ITS PROVISIONS MAY BE DIRECTED TO THE ABOVE REGIONAL OFFICE'S COMPLIANCE OFFICER, (212) 264-0346.